



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

SEPTEMBER 9, 2003

PRESENT: Acevedo, Benich, Escobar, Engles, Lyle, Mueller

ABSENT: Weston

LATE: None

STAFF: Planning Manager (PM) Rowe, Associate Planner (AP) Tolentino,
Community Development Director (CDD) Bischoff, Senior Engineer (SE)
Creer and Minutes Clerk Johnson

Chair Mueller called the meeting to order at 7:01 P.M.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

In keeping with his policy to have the Commissioners and public more aware of the Planning staff, Chair Mueller requested PM Rowe to provide an overview of his background and responsibilities, to which he graciously responded.

Chair Mueller opened the public hearing.

With no one present wishing to address matters not appearing on the agenda, the public hearing was closed.

MINUTES:

AUGUST 12, 2003

COMMISSIONERS ESCOBAR/ACEVEDO MOTIONED TO APPROVE THE AUGUST 12, 2003 MINUTES WITH THE FOLLOWING AMENDMENTS:

Page 2, 3rd paragraph:for high-density zoning and affordable homes located near transit services entrances.

THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO,

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BENICH, ESCOBAR, ENGLES, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.

NEW BUSINESS:

**1) ZA-02-12/
DA-02-11: NINA
LANE-CHEN**

A request for approval of a zoning amendment and development agreement for a five-unit residential project located at the southeast corner of Juan Hernandez Dr. and San Vicente Ct. The subject site is approximately 1.26 acres, and is located in the R1(12,000)/RPD zoning district.

PM Rowe gave the staff report, explaining the benefit relation of this project to the Laurel Oaks development, and the need for agreement to annex with the Home Owners Association to that project. Because that agreement has not yet been finalized, and is essential to having this project proceed, the applicant is requesting this matter be continued to the next Planning Commission meeting, September 23, 2003.

Chair Mueller opened the public hearing.

With no persons present indicating a wish to speak to the matter, the public hearing was closed.

COMMISSIONERS ACEVEDO/ESCOBAR MOTIONED TO CONTINUE THE PUBLIC HEARING TO THE NEXT REGULARLY SCHEDULED PLANNING COMMISSION MEETING, SEPTEMBER 23, 2003. THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR, ENGLES, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.

**2) SD-03-06/
DA-03-07:
CENTRAL-
CENTRAL PARK**

A request for approval of a 39-lot subdivision and development agreement for Phase VII of the Central Park project located on two parcels totaling 11.5 acres east of Butterfield Blvd. and north of Calle Hermosa in the R2-3,500 and R1-7,000 zoning districts. Commissioner Lyle cautioned that there is a need to set definite time frames for action.

PM Rowe gave the staff report, noting that although this PUD had received prior approval, there was one lot (lot 31) which is of substandard size. (Current minimum requirement: 5,250 sf; lot 31: 5,026 sf) PM Rowe indicated this does not appear to present a problem. He continued by noting changes to the Development Agreement J I) and (ii) dealing with school commitments [as well as date changes to Exhibit B which are in keeping with the Commissioner's request to have developments included within the quarterly reporting].

Commissioner Escobar asked about the basics of the site plan dealing with the placement of BMRs? "Are those elements presented consistent with the policy in Measure P," he questioned, as he called attention to BMR placement on lots 3/4 and 17/18/19. PM Rowe responded that the policy is to have the BMRs distributed evenly throughout the project.

Chair Mueller interjected that BMRs are normally found in pairs, but the staff and

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Commissioners continue to look at the 'whole project' in ascertaining placement.

Commissioner Lyle referenced the Standard Conditions, stating that "Number ~~12~~ M12 is always checked." PM Rowe indicated that all the Standard Conditions would be revisited for accuracy to the development.

Chair Mueller opened the public hearing.

Scott Schilling, 16060 Caputo Dr. #160, representing South Valley Developers, explained that there is intent to 'spread the BMRs through the project, ensuring that they are evenly spread throughout the 30 acres'. Mr. Schilling stated that many of the Standard Conditions have already been completed, citing Standard Condition P142 [detention ponds] as an example. He stated that he is working diligently with Public Works to ensure this Standard Condition has been met.

"Right now, the restrictions placed on us by the Fire Department through the Standard Condition are our biggest issue," Mr. Schilling declared, as he called attention to #11 on page 15 and #16 on page 16. "This is much more restrictive than in the past," he said, "this would require putting in paved all-weather roads before this phase of the project could begin – even to have construction materials delivered. Right now, we have had no problem on working on dirt roads between April and October and most cases even into November. This is progressively more restrictive, and adds another layer of difficulty for construction if we must wait until October when we would be working the sites in the mud." He asked the Commissioners to consider the prior approvals when working on base-rock roads in the summer was permissible.

Mr. Schilling then turned to the Development Agreement [page 7 (i) sentence 3] asking that it be changed to: ~~One~~ Two of the BMR units shall be under construction and the framing inspection passed prior to the issuance of the 8th 18th building permit and the remaining ~~three~~ two BMR units shall be under construction and framing inspection passed prior to the issuance of the 30th building permit. Commissioners clarified that there were a total of four BMRs under discussion.

Mr. Schilling explained that the items remaining for completion included the second tot lot and the landscaping for the pathway. Responding to a question from Commissioner Lyle, Mr. Schilling agreed with the staff report that *increasing* the size of lot 31 should present no problems. Continuing dialog with Commissioner Lyle, Mr. Schilling indicated that he understood \$3,000 is required for each lot to be paid to the schools.

With no other persons indicating a wish to speak to the matter, the public hearing was closed.

PM Rowe said that Mr. Schilling is correct regarding item # 6 on page 21 of the Standard Conditions regarding the access required by the fire department, and indicated this matter had not previously been a requirement. He stated that while the Planning Department would not consider any variation to existing code, perhaps this matter should be revisited. Commissioners urged that action.

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During discussion, it was ascertained that:

- Lot 31 should be increased in size from 5,026 sf. to 5,250 sf.
- the requirements of the fire department would be revisited and evaluated by allowing the Fire Marshal to approve exceptions to the road paving requirement.
- the second tot lot would be in place as previously agreed
- the landscaped pathway would be required
- the requirement for the storm drains would be appraised by public works
- there is agreement for the wording suggested for the completion of the BMRs
- the dates as adjusted on Exhibit 'B' were agreed
- an assessment of \$3,000 per lot for schools is required

Commissioner Benich asked for a projection of completion dates for the project. Mr. Schilling responded that it probably would be two-and-one-half years from April, or three years from now. Chair Mueller continued the subject by asking if all the units were started before June 30, 2006, when would the development be completed? Mr. Schilling said then the completion would be at the end of 2006. Commissioner Lyle commented that *if* the Measure P update passes, there will be a need to complete *accelerate* current projects.

Commissioner Acevedo returned to the fire department requirements in the Standard Conditions, indicating he wanted to make sure that in the future all such requirements were clearly understood and not a surprise nor hardship to future developments.

COMMISSIONER ESCOBAR OFFERED RESOLUTION NO. 03-66, APPROVING A 30-LOT SUBDIVISION ON TWO PARCELS TALLING 11.5-ACRES IN PHASE VII OF THE CENTRAL PARK PROJECT SITE, LOCATED NORTH OF CENTRAL AVE., AND EAST OF BUTTERFIELD BLVD. IN THE R1-7,000 RPD & R2-3,500 RPD ZONING DISTRICTS, INCLUSIVE OF THE FOLLOWING:

- **LOT 31 WOULD BE INCREASED IN SIZE TO 5,250 SQ. FT.**
- **MODIFY CONDITION X.6 TO INCLUDE THE WORDS "UNLESS OTHERWISE APPROVED IN WRITING BY THE FIRE MARSHAL".**
- **THE SECOND TOT LOT WOULD BE IN PLACE AS PREVIOUSLY AGREED**
- **THE LANDSCAPED PATHWAY WOULD BE REQUIRED**
- **THE REQUIREMENT FOR THE STORM DRAINS WOULD BE APPRAISED BY PUBLIC WORKS**
- **THERE IS AGREEMENT FOR THE WORDING SUGGESTED FOR THE COMPLETION OF THE BMRs (Development Agreement [page 7 (i) sentence 3])**
- **THE ADJUSTMENT OF DATES ON EXHIBIT 'B'**
- **AN ASSESSMENT OF \$3,000 PER LOT FOR SCHOOLS IS REQUIRED**

COMMISSIONER BENICH SECONDED THE MOTION. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR, ENGLES, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.

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3) SD-03-07/ DA-03-08: SUNNYSIDE- QUAIL CREEK

A request for approval of a 22-lot subdivision and development agreement for Phase III of the Quail Creek project located on a 15.7 acre parcel on the north east corner of the intersection of Sunnyside Ave. and Watsonville Rd. in the R-1 7,000/RPD zoning district.

PM Rowe presented the staff report, noting that the changes agreed to in agenda item 2 would be similar in this, as well.

Such changes would be:

- A substandard minimum lot size agreed to
- (Standard Conditions) page 3, item 3 (e) and B (5) should be checked
- (Standard Conditions) page 7, item H ~~30~~ 45 years (this being consistent with prior practice)
- (Standard Conditions) page 7, item 4 is to meet the goals of the Down Town Task Force
- (Standard Conditions) page 8, item J (1) is to be checked
- Development Agreement: date change to reflect the Commissioners request for inclusion of projects into the quarterly reporting
- Development Agreement: page 8, (n) (i) ~~three~~ two (ii) delete

Chair Mueller opened the public hearing.

Scott Schilling, 16060 Caputo Dr. #160, representing South Valley Developers, said there was agreement that two BRMs were required; not three. He questioned the width of lot 44, which he indicated to be a corner lot planned with duet housing. Commissioner Lyle used the map to clarify that the lot was not planned for duet housing, with Mr. Schilling agreeing to both the drawings and the lot width.

Janerik Wilson, 13110 Llagas Ave., San Martin, a student at Live Oak High School, asked for explanation of the term 'BMR', with Chair Mueller providing the information. Mr. Schilling told the audience the anticipated selling cost of a BMR and the income requirements for purchase of the units.

With no others in attendance to address the matter, the public hearing was closed.

COMMISSIONER BENICH OFFERED RESOLUTION NO. 03-68, APPROVING A 22-LOT SUBDIVISION ON A 5.6 ACRE PORTION OF A 15.72-ACRE SITE, LOCATED ON THE NORTH EAST CORNER OF THE INTERSECTION OF SUNNYSIDE AVE., AND WATSONVILLE RD. THE MOTION INCLUDED THE FOLLOWING CHANGES:

A minimum lot size agreed (lot 44 to be 5,250 sf.

(Standard Conditions) page 3, item 3 (e) and B (5) should be checked

(Standard Conditions) page 7, item H ~~30~~ 45 years

(Standard Conditions) page 8, item J (1) is to be checked

Development Agreement: date change to reflect the Commissioners request for inclusion of projects into the quarterly reporting

Development Agreement: page 8, (n) (i) ~~three~~ two (ii) delete

THE MOTION WAS SECONDED BY COMMISSIONER ESCOBAR AND

CARRIED WITH THE AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; WESTON WAS ABSENT.

COMMISSIONER BENICH OFFERED RESOLUTION NO. 03-69, RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT APPLICATION DA 03-08 FOR APPLICATION MP 02-24: SUNNYSIDE-QUAIL CREEK WITH THE FOLLOWING MODIFICATIONS:

A minimum lot size agreed (lot 44 to be 5,250 sf.)

(Standard Conditions) page 3, item 3 (e) and B (5) should be checked

(Standard Conditions) page 7, item H ~~30~~ 45 years

(Standard Conditions) page 8, item J (1) is to be checked

Development Agreement: Exhibit 'B' - date change to reflect the Commissioners request for inclusion of projects into the quarterly reporting

Development Agreement: page 8, (n) (i) ~~three~~ two (ii) delete

Note: there was an apparent discrepancy regarding the number of moderate rate units (~~six~~ four) and two BMR units for this phase of the project; developer is to clarify the original application with staff before finalization.

THE MOTION WAS SECONDED BY COMMISSIONER ESCOBAR AND CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR, ENGLER, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.

Determination as to whether weekly outdoor sales of artist arts and crafts may be conditionally allowed in the CC-R, Central Commercial Residential District.

PM Rowe explained that this and agenda item 5 are 'exploratory' items for discussion and direction from the Commissioners which would allow the applicants to proceed with use permit requests.

OTHER BUSINESS:

4) USE DETERMINATION FOR ARTIST BAZAAR/OUTDOOR SALES IN THE DOWNTOWN

PM Rowe presented the staff report in which he noted that this request deals with having artists' bazaar/outdoor sales in a parking lot of the applicant's studio parking lot. The parking lot, he said, is not to code and is not recognized as an actual parking lot. PM Rowe referenced the Down Town plan which specifies that businesses are to be 'consumer friendly'. The applicant proposes to have the bazaar/outdoor sales on the weekend (Saturday) and parking is available at a nearby public parking lot; consequently, staff does not object to waiving the usual parking requirements for this activity.

Commissioner Escobar asked the size of the area proposed for use in the bazaar/outdoor sales? The total area of the site is in excess of 8,000 sf.

Commissioner Engler asked if the conditional use is consistent with the Down Town Plan? There was a reminder that a conditional use permit was not under discussion, but a determination whether that permit warranted application.

Commissioner Acevedo indicated he favored the proposal, but questioned why the

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uses permitted under the City's Temporary Use Permit (TUP) guidelines could not be modified to meet this need? A Conditional Use Permit, it was explained, is more restrictive and 'runs with the land' providing indication that special uses such as this that the request in item 5 (next agenda item) are more conducive to a Conditional Use Permit (CUP) if the Commissioners agree with the concept.

Chair Mueller reminded that actual approval for the use is not under discussion at this time.

Chair Mueller opened the public hearing.

Shelley Hanes, 17265-B Monterey Rd., referenced the letter she had submitted regarding this matter. Ms. Hanes said she had been making the contacts and arrangements for the 'Art in the Alley' event(s) with the only question being the fee scale. Commissioners discussed with Ms. Hanes the need for sales tax collection and the mechanism(s) of booth fees.

Don Jensen, 20 E 5th St., spoke in favor of the proposal.

Danielle Hughes, 17394 Carriage Lamp Way, indicated strong support for the plan, stating a belief that it would be 'good for the City'.

With no others present wishing to address the matter, the public hearing was closed.

Commissioner Engles commented that on the Down Town Plan, this is 'exactly what should happen'.

Commissioner Acevedo said that he would like to see the shows presented on the street, but he was 'OK' with using the parking lot. He suggested revisiting the TUP guidelines to increase the (specific) time limits for uses such as this.

Chair Mueller indicated that it might be important to look at 'specific' for the Down Town area.

Responding to a question from Commissioner Escobar, PM Rowe said that it was anticipated that the event would run a concurrent calendar time with the Farmer's Market held in the downtown area.

Commissioner Benich said this is a good proposal, and will provide a more 'vibrant' downtown area.

Chair Mueller determined there was a consensus of those Commissioners present (and Weston was absent) to direct staff to proceed with accepting a CUP for the use indicated.

Before commencing the next item, Chair Mueller indicated for the record that he is an officer in the Morgan Hill Community Health Foundation.

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5) SOUTH VALLEY IMAGING USE DETERMINATION

A request for a Planning Commission use determination regarding a proposal to establish an MRI imaging lab center for ambulatory outpatients at 300 Digital Drive in the Morgan Hill Ranch PUD.

PM Rowe gave the staff report, indicating this was primarily a discussion item in the same vein as the preceding agenda item. The request is ostensibly for the placement of a MRI (diagnostic imaging) facility as a permitted conditional use in an under-construction business park. There has been indication, he said, in talking with the applicants that the surrounding buildings may be requested for use by doctors and dentists for office space, although there are none listed as permittees at this time.

PM Rowe explained that in the imaging office, there are anticipated to be three employees in addition to regularly scheduled patients. The parking requirements for medical facilities were described, as PM Rowe indicated that sufficient parking issues for such facilities may exist at this location. There is also the potential for land use incompatibility, PM Rowe stated.

Commissioner Acevedo asked about the parking plan described briefly in the letter from the applicant. PM Rowe said that the data obtained indicates that the imaging facility will require a lower ratio of parking than a typical medical facility.

PM Rowe said that in actuality the Commissioners were being asked to deal with two issues: the specific request for considering a CUP for the imaging facility and a broader question of whether a medical community (doctor and dental offices) would be established at the location.

Commissioner Lyle recalled that sometime within the last two years, a number of medical offices had been approved north of Cochrane after the hospital closure. "How is this different?" he asked. PM Rowe responded those had been considered interim arrangements, and were temporary until new office space became available. He reminded that shared parking with existing uses had been available at that location, too.

Chair Mueller concurred, stating that there had been non-manufacturing uses established in the area, and that the use permitted was for a specific period of time.

Chair Mueller opened the public hearing.

Gaye Quinn, 600 Miller Ave., Mill Valley, California, provided the background of the project site. She said the MRI unit was proposed to occupy unit #350 in the project. Ms. Quinn spoke on the issues of definitions of categories for the project as indicated in the original application. She said that the needs of potential purchasers has been changing and now this group is interested in the site because of the placement of large, heavy equipment for the service offered. Ms. Quinn emphasized that it is important to separate the issues before the Commissioners: the actual request and the potential uses. The real question, Ms. Quinn stressed, is the need by the public for the imaging business as well as the potential for other medical services in the complex. "We never expected to have requests from doctors and dentists for space, but we are getting that interest," she said. Ms. Quinn concluded by speaking of the three additional buildings

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which will be constructed on the site. “We’d like to come back before commencing construction to talk about the uses,” Ms. Quinn said, “but right now, I am asking that you seriously consider permitting this application to go forward.”

Commissioner Escobar asked if there were similar uses in the area now? [no] He also if the proposed arrangement is to purchase or lease? [There will be a lease/option]

Ms. Quinn stressed again that she is asking for an adjustment to the intended/stated use and indicated that she fully intends to come back with a revised proposal for the full property.

Commissioner Acevedo clarified that the discussion tonight centers only on the imaging center.

Brian Kelly, 350 Digital Dr., a realtor for the Business Park developer, said that numerous inquiries have been received within the last 3 – 4 months from doctors and/or dentists looking to purchase buildings for their practice. Mr. Kelly was unable to answer a question from Chair Mueller about the PUD on the property which features non-manufacturing uses, saying that Ms. Quinn should address the question.

Aaron Hoyaskimo, 276 Palm Valley Blvd. #109, San Jose, said that the imaging center needs to have a large space for the machine(s) used, at least 3,200 sf., as well as a large area around the imaging machines for the magnetic field. He said that the parking needed is less than for a dental office. Dr. Hoyaskimo said that owning the space is far more desirable than renting.

Commissioner Benich asked if Dr. Hoyaskimo ~~is interested in continuing with the CUP?~~ *envvisions expanding to other types of non-invasive diagnostic machines or techniques in the future?* Dr. Hoyaskimo said it was intended that the imaging group would return for further work on the project. Dr. Hoyaskimo said that the presence of doctors and dentists is important for referrals to other medical professionals.

Commissioner Engles asked if Dr. Hoyaskimo had formed an opinion of the existing medical building next to the hospital for the imaging center? Dr. Hoyaskimo replied that he was aware of it, but had not ‘walked through it’. Commissioner Engles asked if Dr. Hoyaskimo had talked with any member of the ‘Blue Ribbon’ Health Committee. Dr.. Hoyaskimo again replied that he had not, emphasizing that a freestanding building was preferred to the one suggested. Commissioner Engles reminded that the City Council wants all medical services located in one spot. “We’ve spent a ton of money to determine that,” Commissioner Engles declared.

Dr. Hoyaskimo said his group has the latest technology, many of the doctors and technologists being newly trained at Stanford. He concluded by saying that many doctors in the area appear amenable to having an imaging center in a freestanding facility.

Chair Mueller suggested there is a need for the applicants of the medical facility to talk to the persons in administration at the hospital.

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Chair Mueller asked members of the Commission if they were interested in

entertaining the use described within the business park? "We really need to consider the other uses in the business park," he said.

Commissioner Lyle said he would like to see a presentation which contains a combination of the imaging center and the doctors and dentists. He asked Dr. Hoyaskimo if the center could exist without other medical offices nearby? Dr. Hoyaskimo responded that if there were other medical personnel within a five-mile radius, they could be relied upon for referrals. He indicated that others in his field feel OK with the current community availability.

Ravinder Sohal, 646 Waverly St., Palo Alto, said that he had written the letter to the Commissioners with the request for determination. He explained that leasing other, non-free standing space is very difficult with a short-term lease such as would be available with the hospital facility. "We really need to own our building," Dr. Sohal said.

Commissioner Lyle asked that if doctors and dentists were within distance of a five-mile radius would the imaging center be viable without a doctor very nearby? Dr. Sohal responded, "Yes, we anticipate many referrals from Gilroy and Salinas, with patients coming from an area north to San Jose, south to Salinas and King City, east to Hollister, and west to Watsonville and Santa Cruz. There will be referrals from those areas because the services are not available presently and there is definitely a patient base there."

Chair Mueller presented a brief overview of the history of the PUD at the site under discussion. He said there was a whole section for non-manufacturing business in the business park near Cochrane. It was originally envisioned that a portion would be set aside for support services and not the total business park.

Chair Mueller closed the public hearing as there was no indication that others wished to speak to the matter.

Chair Mueller reminded again that a final decision would be not be made at this meeting.

PM Rowe explained the PUD/light industrial zoning(s).

Commissioner Benich said he sees the benefit for an MRI free standing facility, but questions if this is the right spot with the current conditions at Morgan Hill Ranch. Commissioner Benich said that in thinking of other, appropriate locations, he struggles but believes that it is not appropriate here and therefore will not support the proposal.

Commissioner Lyle said he would consider the proposal even though it may not be appropriate for the current conditions and location. He continued that he understands the need for ownership and control of the property. "I believe it would help bring back doctors and medical personnel," Commissioner Lyle said, "and it's good because it's independent." He said he would not support having doctor and dentist offices at this location at this time, but says this proposal 'appears good'.

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Commissioner Escobar indicated agreement with Commissioner Lyle's views and statements. "It's difficult to force a business to lease or rent with the dollar obligations they have," Commissioner Escobar said. "They don't have to be in close proximity with other medical personnel and facilities so this is good."

Commissioner Acevedo said this is relatively easy for him because he has been persuaded that this is not a medically intensive business, but medical testing and is a permitted use at the location indicated. "This is a 'slam dunk'," Commissioner Acevedo declared.

Commissioner Engles said he has 'mixed feelings' regarding the matter, recognizing that the applicants wanted the site for the real estate investment. "I'd prefer having the facility located at the hospital site but understand the reluctance to locate in a rented space," Commissioner Engles said. "So I can see (reluctantly) supporting the imaging center, but not medical offices. And I wouldn't want to see the rest of the complex contain medical offices."

Commissioner Escobar spoke on the potential for change of direction in the use at the site. He indicated an understanding of the importance of preparing a marketing brochure for the business.

Chair Mueller said, "Then four Commissioners would consider further investigation of the proposal. I hear the argument for the proposal." He indicated that medical testing is not the same as originally intended for the site and continued that this is the wrong place for an imaging center.

Commissioner Acevedo said the 'timing may be off' at present; other Commissioners disagreed saying the proposal could be considered.

Chair Mueller wondered if this is truly a reasonable use for a premier business park?

Commissioner Escobar said Commissioners must be careful not to open a 'Pandora's box' and stray from the original concept.

Commissioner Lyle cautioned staff to ensure a total listing of conditions.

In a 'straw vote', the following was indicated: vote', the following was indicated: **YES: LYLE, ESCOBAR, ENGLES (who stated disappointment that the applicants had not talked with the local medical community), ACEVEDO.** It was clearly and repeatedly stated that the consideration was for this proposal only and no promises would be made regarding the other medical use proposals or any other development at the site.

6) POLICY DIRECTION REGARDING INSURANCE FOR ATTACHED HOUSING

Significantly increasing insurance premiums for new, for-sale attached housing units have made the construction of these units financially infeasible for local developers. Developers and Staff request policy direction from the Planning Commission for design alternatives to the attached housing units. Policy direction is also requested to address Measure P, Zoning and General Plan implications, eligibility criteria, and procedural standards.

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AP Tolentino presented the staff report, saying the developers in the area had called the matter to the attention of the Planning Staff, and indicating it was fast becoming an urgent problem. The developers (specifically Rocke Garcia and Richard Oliver) had submitted proposals designed to alleviate the difficulties and setbacks being experienced particularly with the lack of insurance availability to the subcontractors. The root of the problem stems, they said from the inability of the subcontractors to obtain liability insurance for work on the attached BMRs. AP Tolentino went on to explain that due to the restrictions of Measure P, the General Plan and zoning code standards, there was little the staff had in place to work with in the area of variances. The problem, she said, is particularly acute with previously approved plans for the BMRs, which by Measure P language are generally attached units.

Commissioner Escobar said that in reading the staff report, he could not help but wonder if only Morgan Hill is affected. "Is this not a problem nationwide, or at the very least, statewide?" he asked. "Are any other jurisdictions moving on the issue?" AP Tolentino said that staff research indicated that only the City of Torrance (CA) was preparing to try to deal with the matter.

Commissioner Lyle asked why Morgan Hill might be a 'point person' for the distress? "What are the large Cities doing?" It was explained that the developers in this area are generally considered 'small' whereas the majority of developers in San Jose, for example, are generating large numbers within a development and may have the equivalent of being 'self insured' or at least have the ability to spread the insurance needs over a large area, perhaps several cities or states.

Responding to a question/statement from Commissioner Escobar indicating that 'Morgan Hill can't be the only small community to face this problem', AP Tolentino and PM Rowe explained that the number of companies willing to write insurance for the work were becoming fewer. There used to be about 10 – 15 carriers ten years ago, but that number has shrunk to 1 – 2, and that appears to change rapidly, ever diminishing. The basis for concern, according to information provided by the developers, appears to be litigation focused on attached housing, and the developers have been told there is a higher incidence of litigation in this area than in others.

Commissioner Lyle pondered if this is an issue that the State Legislators overlook when formulating the state law?

Commissioner Escobar noticed that the developers have proposed a short-term solution, but the staff has not made recommendation in the matter.

Chair Mueller led discussion that this is a generic problem in the state of California. "Skyrocketing insurance costs," he said, "have resulted in this being a problem for attached single family housing." Chair Mueller continued that there is a need to consider a short-term (18 months) solution and a long-term solution by looking at the components of Measure P. "The State must solve the issue/problem eventually," he said, "but the Commissioners must work with the developers now."

Chair Mueller opened the public hearing.

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Rocke Garcia, 100 East Third St., said that the developers had thought the matter had been addressed, but the trial attorneys had pointed out that the issue with the Homeowner's Associations throughout the state had not been resolved. Continuing, Mr. Garcia said, "Big builders build just as many attached as detached, but the big builders have not ~~reduced~~ *produced* the construction of attached housing except in partnership with Cities." Referencing SB800, Mr. Garcia indicated hope that the legislation would address the problem. "However, the insurance companies don't want and won't insure attached housing at this time. Mr. Garcia said, "We're asking for help in making it work. This adds costs to building, and we are hoping for a temporary 'fix' until the insurance companies (hopefully) come around."

Mr. Garcia called attention to the rough drawings in the developers' proposal which suggests a 'quick fix' by camouflaging the slightly detached units to appear to be attached.

Chair Mueller asked about the possibility of a 'wrap policy'. Mr. Garcia responded it is too expensive.

Commissioner Acevedo asked why there is importance to having the detached housing 'look attached'? It was explained that the BMRs which are attached generally have a smaller floor plan but may be placed adjacent to a ~~multi-square foot~~ *much larger* house, and the appearance of *separate small homes* detracts from the neighborhood.

Referencing the rough drawings, Commissioner Lyle said it is very apparent to him that the dwellings are detached. "It is highly noticeable," he said.

Dick Oliver, 1556 Morning Star, said that the amount of litigation in Morgan Hill is 'next to nothing' but the insurance companies do not consider specific geographic location. "A minimum policy can't be obtained for small projects."

Commissioner Escobar asked if the developers had maintained a relationship with the insurance carriers? Mr. Oliver said that with the recent changes, no developer is sure they can get insurance at all – and if it is available, the cost can be prohibitive.

Commissioner Lyle inquired about the insurance costs? Mr. Oliver explained the need and requirements for liability insurance and the current lack of availability of the liability insurance. He said the problem is especially acute for subcontractors and this presents a major problem for the developers.

Mr. Oliver said, "Why Morgan Hill? Well, there is the requirement under Measure P for 10% attached housing, but the insurance applies to the entire project." The timing of this issue seems to be fast approaching the crisis stage, Mr. Oliver reported, adding that the problem concerning subcontractors affects all developers in the area. "We're caught," he said, "we can't pull permits, we can't get insurance, and how do we deal with existing projects without insurance? It appears that unless changes are made, and ~~if the~~ under Measure P ~~update passes~~, we will have to submit two sets of plans and two site plans – and we're under the gun to get those plans finalized for submission to the City this month. But first and foremost, the issue to deal with is the existing projects."

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Mr. Oliver then read suggested language for an emergency ordinance in the form of a Resolution with findings to be determined by the next meeting of the Commission when a vote could be completed. He suggested that the emergency ordinance could be moved swiftly through the City Council and would include the existing project movement with a minimum of staff involvement. New projects, Mr. Oliver said, would retain full review. The proposal included a 'sunset clause' and would contain provision for a minimum of a 5-foot separation between the units with a zero lot line. Mr. Oliver said the importance would be to address the PD zoning. "There would be no change in the lot size(s)," Mr. Oliver said, "and it will be important for the Planning Commission to say what they want for the definition of a separation (distance wise)."

Developers present responded to Commissioners' questions:

- progress of specific projects
- when the problem became noticeable [the first of this calendar year]
- an estimate of the number of subcontractors affected (roughly 1/3 of licensed subcontractors located from north of San Jose to Salinas; about 20 – 30 locally, with 5 already leaving the area]
- when the 'crisis' started becoming acute [about 6 months ago]
- within the past three months, developers had experienced a dramatic rise in the cost of premiums

Scott Schilling, 16060 Caputo Dr. #160, spoke on the difficulties experiences in the matter by South Valley Developers. He said that within the last three years, after having been with the same carrier for many years, he had had three different carriers. Most recently, within one week of the expiration date of the policy, he was informed of a notice of non-renewal. Mr. Schilling said this caused him to 'scramble' to get insurance and finally obtained a policy on the last day possible – at truly a premium price.

All developers who spoke stressed that the local economy *would be strongly affected* because of this business event.

With no others present to address the matter, the public hearing was closed.

Commissioner Engles asked why staff had not made recommendation in this matter? AP Tolentino responded that staff is seeking direction for resolution from the Commissioners.

Commissioner Acevedo stated that he is 'OK' with a 'band aid' approach for the current projects. "After all," he said, "Measure P stresses affordable housing. The main issue appears to be how to separate the housing and still make them look nice. Is that really doable?" Commissioner Acevedo went on to suggest a subcommittee to meet and formulate a recommendation for resolution by the next meeting.

Commissioner Benich said he is concerned with the need to have affordable housing look nice and blend in. "I'm in favor of an emergency ordinance suggested by the developers," Commissioner Benich declared.

Commissioner Lyle stated there is a need to proceed with haste. "I'm 'OK' with a

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subcommittee, or having quasi-attached housing either one, but we need input from staff,” he said.

Chair Mueller suggested having a volunteer subcommittee directed to return in two weeks (next meeting) with firm, workable solution suggestions. He indicated that his preference is to work within an RPD for resolution. “I’m also OK with an urgent ordinance,” Chair Mueller stated. Chair Mueller went on to speak about zero lot lines and side yard setbacks. “I do like the idea of the subcommittee rather than action tonight,” Chair Mueller proclaimed.

Chair Mueller asked Planning Department staff how many units would be affected by this issue within the next 18 months? AP Tolentino said a rough overview had indicated that about 82 units (up to 2004 – 05) would be involved. Commissioner Lyle said that it would be wise to include potential units through 2004 – 05.

PM Rowe was asked how South County Housing (a non-profit housing provider) was handling the matter. The architect contracted by South County Housing is able to cover non-profits through a company carried insurance, he informed. Commissioner Lyle asked about the Warmington representative? It is unsure who that is at present; it was noticed that Warmington is a very large company and not affected to the degree that the local developers are.

Chair Mueller reflected that it was the consensus of the Commissioners to put a subcommittee in place for recommendations to be presented at the next meeting, mulling who should be on the committee? Commissioners suggested two developers (Garcia and Oliver), three Commissioners (Weston, Lyle, Benich), a member of the Architectural Review Board, a City Council member, and Planning Staff. Chair Mueller said it will be important for the subcommittee to identify qualifying criteria along with a demonstration of need.

7) REVIEW OF PROPOSED MEASURE P UPDATE INITIATIVE

CDD Bischoff presented the staff report, indicating that Commissioners Weston, Engles, and Lyle had participated as members of the Measure P Update committee. CDD Bischoff also reminded that the Commissioners earlier this year had reviewed the list of twenty-five items with suggested changes offered to the City Council. He then gave an examination of each of the items, noting which had been agreed to by the Council. CDD Bischoff emphasized that the Council appreciated the work of the Commissioners but in considering the suggested changes frequently deferred to the Committee’s vote on the matters.

Commissioners discussed with CDD Bischoff the items with which they had concerns or continued conflict of thinking. It was decided that each of the Commissioners would communicate specific areas of concern to staff so that research could be made with clarification as necessary.

CDD Bischoff highlighted three major changes to the draft document:

schools SB 50 has significantly constrained the City from mitigations to school matters

single unit exemptions as written in Measure P, this is exempt if a single unit is on a single lot

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properties not within the Urban Service Area (USA) by specified dates are not allow to develop to a greater density than in the County at the time of annexation to the USA CDD Bischoff indicated the property at Hill Rd. and Barrett as an example.

Commissioner Engles left the meeting at 10:15 p.m. and returned at 10:18 p.m.

Commissioners continued discussion with CDD Bischoff by reiterating specific concerns. They were urged to put those concerns in writing to staff and send as soon as possible.

CDD Bischoff explained the survey (for public input and potential acceptance) which had been conducted by the students at SJSU.

CDD Bischoff also presented the draft of the Initiative (attachment 3 in the staff report), describing the sections:

Findings

Amendments to the General Plan*

Amendments to the Zoning Ordinance*

*These two sections tend to overlap.

CDD Bischoff concluded by announcing that no action was necessary at this meeting. He further informed that at the next meeting of the Commission he would be present, as would the attorney who drafted the Initiative. CDD Bischoff urged Commissioners to submit the concerns as soon as possible.

ANNOUNCEMENTS: PM Rowe reported the following items of interest:

South County Housing is working with the City on development potential in the area of Monterrey Road, North of Wright Ave and west to Del Monte (with access to the residential development off Del Monte). Because of the importance, the representatives of South County Housing have requested a workshop with the Commissioners at 6:00 p.m. before the next meeting (September 23, 2003). Commissioners agreed such meeting/workshop would be beneficial.

Commissioner Lyle left the meeting at 10:55 p.m. and returned at 10:57 p.m.

City Council action:

At the August 20 meeting, the Council accepted the RDCS report, noting that in 2004 – 05, there would be 182 allocations available of the 232 total. It was strongly suggested by the Council that when the allocations are considered, those applications which were presented but not awarded allocations in the last cycle, be included without penalty.

The Council heard the appeal of the General Plan amendment request of the Pinn Brothers (Monterey Rd) and continued the matter to the September 17 meeting, when action is anticipated.

The Council members agreed with Commission denial of the Spring Manor development in that easement request.

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The Council accepted the recommendation of the Commission regarding PUD zoning for the mobile home parks in the matter of mobile home park conversions.

At the September 3 Council meeting, acceptance was made of the development agreement for the two projects of Pacific Union homes.

Chair Mueller requested that in the future, City Council actions be listed similar to the upcoming agenda items. Others agreed this would be beneficial for information and might reduce the length of the meetings.

PM Rowe reported, in response to a question from Commissioner Benich that the recommended minimum fence heights would be dealt with in the overall changes to the Zoning Ordinance.

Chair Mueller indicated he would like to see the street standards in the very near future. [next month]

CDD Bischoff reported that the Murphy Avenue Corridor study has been rolled into the Green Belt Committee study with finished work expected by the end of the year. The documents should be seen by the Planning Commission by February 2004.

CDD Bischoff also reported that once work is finished on the Measure P update, attention will be directed to the Housing Element. One concern, he disclosed, is that if Measure P is extended (time wise), if the City will meet the 'fair share' housing obligation as set by the State. Just now, it will be necessary to review and resubmit the Housing Element to the State.

Chair Mueller asked if thought was being given to a study session with the primary traffic consultant as to how reports are written and how those reports should be interpreted? [It's on a back burner just now].

ADJOURNMENT: There being no further business, Chair Mueller adjourned the meeting at 11:02 p.m.

MINUTES RECORDED AND PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk